

ETHICS ORDINANCE AND CHARTER PROVISION

Detroit City Charter, Section 2-106 Standards of Conduct

1. The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, consistent with state law. The ordinance shall contain appropriate penalties for violations of its provisions. The ordinance shall provide for the reasonable disclosure of substantial financial interests held by any elective officer, appointee, or employee who regularly exercises significant authority over the solicitation, negotiation, approval, amendment, performance or renewal of city contracts, and in real property which is the subject of a governmental decision by the city or any agency of the city. The ordinance shall prohibit actions by elective officers, appointees, or employees which create the appearance of impropriety.

2. An independent board of ethics is created. The board of ethics shall consist of seven (7) members:

A. Seven (7) members of the public:

1. Three (3) who shall be appointed by the city council;
2. Three (3) who shall be appointed by the mayor; and
3. One (1) who shall be jointly appointed by the mayor and city council;

B. None of the board members shall be removed by the respective appointing authority except for cause;

C. The term of membership of the board shall be five (5) years, and not more than two (2) members' terms shall expire in any one (1) year;

D. Each appointee may serve a maximum of two (2) consecutive five-year terms, not to exceed a total of ten (10) years.

Public members of the board shall be residents of the city who are not elective officers, appointees, or employees of the city at any time during their board membership. Members shall serve without compensation. All city elective officers, appointees, and employees shall be available for consultation with the board of ethics as it deems necessary. The board of ethics shall issue advisory opinions regarding the meaning and application of provisions of the Charter, city ordinances or other laws or regulations establishing standards of conduct for elective officers, appointees, or employees. Advisory opinions shall be rendered upon written request by an elective officer, appointee, or employee. Advisory opinions shall be published by the board annually in a report to the mayor and city

council. The opinions shall not disclose the identity of the elective officers, appointees, or employees concerned.

All meetings of the board shall be open to the public, unless an individual involved in the matter to be addressed requests in writing that the meeting be closed, or unless otherwise provided by ordinance.

Consistent with state law, the board of ethics may recommend improvements in the standards of conduct to ensure the ethical behavior of city elective officers, appointees, and employees, or in the organization and procedures related to the administration and enforcement of those standards. The board of ethics shall be authorized by ordinance to conduct investigations on its own initiative, subpoena witnesses, administer oaths, take testimony, require the production of evidence relevant to a matter under investigation, appoint independent counsel when necessary, and to perform other functions essential to ensure the integrity of city government. The board shall establish its rules and procedures, in accordance with section 2-111 of this Charter. Funds sufficient to enable the board to perform its duties shall be appropriated annually.

3. Campaign finance reports. Every elective officer or candidate for election shall make public campaign contributions and expenditures by filing a report or reports thereof as required by state law.

(Amendment of 11-7-00)

Detroit Code, Article VI Ethics

ARTICLE VI. ETHICS

DIVISION 1. GENERALLY

Sec. 2-6-1. Statement of Purpose.*

Public service is a public trust. A position of public trust should never be used for private gain as defined in section 2-6-3 of this Code. In order to promote public confidence in public servants, to preserve the integrity of city government, and to establish clear disclosure requirements and standards of conduct for all public servants of the City of Detroit, the City of Detroit enacts this article which shall be liberally construed so as to avoid even the appearance of impropriety by its public servants so that the public interest is protected.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — This article is adopted in compliance with the directive of Section 2-106 of the 1997 Detroit City Charter, entitled “Standards of Conduct,”

that the city council shall enact an article implementing its provisions. Furthermore, a review of the best practices of the federal, state and municipal governments reveal that most jurisdictions have enacted codes governing the standards of conduct for elected and appointed public officials as well as employees.

The integrity of city government and public trust and confidence in public officers and employees require that public servants be independent, impartial and responsible to the People; that government decisions and policy be made within the proper channels of the governmental system; and that public office not be used for personal gain. The purpose of this article is to establish guidelines for ethical standards of conduct for all City government officials and employees by defining those acts or actions that are incompatible with the best interests of the City and by mandating disclosure by public servants of private financial or other interests in matters affecting the City.

Although the article addresses the subject matters set forth in section 2-106, it cannot by its terms and provisions specifically address every conceivable circumstance, situation or question that may raise an ethical consideration in the course of city government. Of course, every situation or issue arising under the article must be evaluated based on its individual merits. However, the article is intended to declare integrity in governmental decision making, operations and processes as a fundamental value and policy of city government to which all public servants in city government should strive to adhere at all times. To underscore the paramount importance of this policy, the article should be liberally construed so as to fully protect the public interest, and to effectuate the directive of section 2-106 that the article shall prohibit actions by elective officers, appointees or employees which create the appearance of impropriety.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-2. Construction.

This article shall be construed in conformity with state law including state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310, et seq.; MSA 4.1700(30) et seq. and contributions to political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201 et seq.; MSA 4.1703(1) et seq.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-3. Definitions.*

For purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:

Agency means any department, office, multi-member body, or other organization of city government.

Appointee means one who holds either a compensated or an uncompensated position as referred to in Section 2-105 of the 1997 Detroit City Charter, including an individual who is appointed by the mayor, the city council, the city clerk, or a department, division or commission head.

Basic living expenses means shelter, utilities, and all other costs directly related to the maintenance of the common household of the common residence of the domestic partners and any other cost, such as medical care, where some or all of the cost is paid as a benefit because a person is another person's domestic partner.

City means the City of Detroit.

City clerk means the city clerk of the City of Detroit as referred to in section 3-103 of the 1997 Detroit City Charter.

City council means the legislative body of the City of Detroit.

Commercial gain means the use by a public servant of any City of Detroit resource including, but not limited to, the city's time, equipment, facilities, supplies or staff, which results or is intended to result in income, as defined in the United States Internal Revenue Code, being 26 USC 1 et seq., to the public servant.

Confidential information means information that has been obtained by a public servant in the course of acting as a public servant, that is not available to members of the public pursuant to the Michigan Freedom of Information Act, being MCL 15.231 et seq., MSA 4.1801(13)(1) et seq., or pursuant to other law, regulation policy or procedure recognized by law, and that the public servant is unauthorized to disclose, including:

(1) Any written information, whether in document or in electronic form, which could be exempted from disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public service disclosing the information is permitted by such authority to make disclosure; and

(2) Any non-written information which, if written, could be exempted from

disclosure pursuant to state law or to other pertinent law, regulation, policy or procedure recognized by law, unless the public servant disclosing the information is permitted by such authority to make disclosure; and

(3) Information which was obtained in the course of or by means of a written or electronic record or oral report of a lawful executive or closed session, whether or not the disclosure of the information would violate State Law, unless the public servant disclosing the information is authorized by State Law to make disclosure, or unless the public servant disclosing the information has been properly authorized to make disclosure pursuant to an applicable law, regulation, policy or procedure, except that when such information is available through channels which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

Decision means:

(1) A determination, action, vote, or other disposition upon a motion, proposal, recommendation, resolution, or ordinance by members of the city council or of a governing body of a city agency; or

(2) A determination, action or other disposition taken by the mayor, the city clerk, or a city agency in the performance of their public duties.

Domestic partner means one (1) of two (2) adults who

(1) Have a common residence; and

(2) Agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership; and

(3) Are not married or are not a member of another domestic partnership; and

(4) Are not related by blood in a way that would prevent them from being married to each other in this state; and

(5) Are at least eighteen (18) years of age; and

(6) Have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and

(7) Are capable of consenting to the domestic partnership.

Exercises significant authority means having the ability to influence the outcome of a decision on behalf of the City of Detroit government in the course of the performance of a public servants duties and responsibilities.

Extraordinary circumstances means circumstances which, due to the

unavailability of information that is critical to disposition by the board of ethics of an advisory opinion request or of a complaint, have prevented the board from completing its investigation.

Have a common residence means that both domestic partners share the same residence. Two (2) people can have a common residence even if one (1) or both have additional residences, or if both domestic partners do not possess legal title to the common residence domestic partners do not cease to have a common residence if one leaves the common residence but intends to return to

Immediate family means:

- (1) A public servant's spouse; or
- (2) A public servant's domestic partner; or
- (3) A public servant's relative by marriage, lineal descent, or adoption who receives, directly or indirectly, more than one-half (1/2) of his or her support from the public servant, or from whom the public servant receives, directly or indirectly, more than one-half (1/2) of his or her support; or
- (4) An individual claimed by a public servant or a public servant's spouse as a dependent under the United States Internal Revenue Code, being 26 USC 1 et seq.

Joint responsibility means that each domestic partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for himself or herself.

Mayor means the mayor of the City of Detroit.

Ownership interest means a financial or pecuniary interest that a public servant has in the affairs of 1) any business entity in which the public servant or a member of his or her immediate family is an officer, director, member, or employee; 2) any business entity in which the public servant or a member of his or her immediate family controls, or directly or indirectly owns, in excess of five (5) percent of the total stock or an interest totaling fifty thousand dollars (\$50,000.00) or more in value; or 3) any person or business entity with whom the public servant has a contract.

Personal services contract means a contract for the retention of an individual to perform services on behalf of the City of Detroit for a fixed period and for fixed compensation.

Private gain means any benefit which is accepted or received by a public servant, or is perceived by a reasonable person to be accepted or received by a

public servant, as remuneration for the purpose of improperly influencing an official action in a specific manner or for refraining from the performance of an official action in a specific manner, or as inducement for the public servant to act in favor of some interest other than in the public interest. To clarify, unless the above-standard is violated, the following types of benefits, monetary payments or reimbursements, gifts, awards or emoluments are permissible to be received by a public servant.

(1) Payment of salaries, compensation or employee benefits to a public servant by the city, or the payment of salaries, compensation or employee benefits to a public servant by an employer or business other than the city pursuant to a contract where the payment is unrelated to the public servant's status as a public servant;

(2) Authorized reimbursement by the city to a public servant of actual and necessary expenses incurred by the public servant;

(3) Fees, expenses or income, including those resulting from outside employment, which are permitted to be earned by, or reimbursed to, a public servant in accordance with this code and with city policies, rules or regulations;

(4) Campaign or political contributions which are made and reported by a public servant in accordance with state law;

(5) Admission or registration fee, travel expenses, entertainment, meals or refreshments (a) that are furnished to a public servant by the sponsor(s) of an event, appearance or ceremony which is related to official city business in connection with such an event, appearance or ceremony and to which one (1) or more members of the public are invited, or (b) that are furnished to a public servant in connection with a speaking engagement, teaching, or the provision of assistance to an organization or another governmental entity as long as the city does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity;

(6) Admission, regardless of value, to a charitable or civic event to which a public servant is invited in his or her official representative capacity as a public servant where any admission or other fees required of all persons attending the event are waived or paid for the public servant by a party other than the city or the public servant;

(7) An award publicly presented to a public servant by an individual or by a non-governmental entity or organization in recognition of public service, acts of heroism, or crime solving;

(8) An award, gift or other token of recognition presented to a public servant by representatives of a governmental body or political subdivision who are acting in their official capacities;

(9) A gift received from a public servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this article;

(10) A registration fee for a seminar or other informational conference that a public servant attends in a capacity other than as a speaker, panelist, or moderator, where such registration fee that is charged for the public servant's attendance is waived or paid for the public servant by a party other than the city or the public servant;

(11) Expenses or gratuities, including but not limited to admission fees, lodging, meals or transportation, that are paid for a public servant and are related to the public servant's participation at a seminar, conference, speaking engagement or presentation in his or her official capacity as a speaker, panelist or moderator where such expenses or gratuities are waived or paid for, as the case may be, by a party other than the city or the public servant, provided that, within five (5) business days after the conclusion of the seminar, conference, speaking engagement or presentation, such public servant files with the City Clerk a statement which contains the following information for each expense that is paid for or waived or for each gratuity that is provided: (a) a description of the expense or of the gratuity; (b) the amount of the expense or of the gratuity; (c) the date that the expense was incurred or that the gratuity was received; (d) the date that the expense was paid or waived, or that the gratuity was received; and (e) the name and address of the party who paid or waived the expense or who provided the gratuity;

(12) Meals or beverages provided to the public servant by an individual or by a non-governmental organization during a meeting related to official city business;

(13) Anything of value, regardless of the value, presented to or received by a public servant on behalf of the city where, pursuant to the applicable provisions of the 1997 Detroit City Charter and this Code, the thing of value is offered to, and accepted by, the city;

(14) A gift to a public servant that either is returned to the donor or is donated to the city or to a charitable organization within thirty (30) days of the public servant's receipt of the gift, provided that the public servant does not claim the

donation as a charitable contribution for tax purposes;

(15) Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials that are received by a public servant;

(16) Compensation paid to a public servant for a published work which did not involve the use of the city's time, equipment, facilities, supplies, staff or other resources where the payment is arranged or paid for by the publisher of the work;

(17) Compensation paid to a public servant for a published work which did involve the use of the city's time, equipment, facilities, supplies, staff or other resources where the payment of the compensation to the public servant is lawfully authorized by a representative of the city who is empowered to authorize such compensation;

(18) Receipt by the public servant of anything of value, where the payment, gift or other transfer of value is unrelated to, and does not arise from, a public servant's holding or having held a public position, and where the activity or occasion for which the payment, gift or other transfer of value given does not involve the use of the city's time, equipment, facilities, supplies, staff or other resources in any manner or degree that is not available to the general public;

(19) Hospitality that is extended to a public servant by an individual, or by an organization, for a purpose unrelated to the official business of the city, including a gift of food, beverage, or lodging; and

(20) Receipt by a public servant of a devise, bequest or inheritance.

Public servant means the mayor, members of the city council, the city clerk, any member of any city agency, board, commission, or other voting body that is established by the 1997 Detroit City Charter or by this Code, and any appointee, any employee, or any individual who provides services to the City of Detroit within or outside of its offices or facilities pursuant to a personal services contract.

Relative means a person who is related to a public servant as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, uncle, aunt, nephew, niece, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law, or sister-in-law.

Voting body means the city council and any other city authority, board, commission, committee, council or group, regardless of whether its function is

legislative, administrative, quasi-administrative, or quasi-judicial or any combination thereof, which, in order to take any official action, even where the action is advisory, must act as a body on the basis of a vote of some or all of its members.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — Domestic Partner: The inclusion of “domestic partner” relationships in the scope of coverage of this article is based on the reality that there are certain close personal, often intimate relationships involving non-married public servants which are tantamount or equivalent to the personal relationships which exist between legally married spouses. The potential for public servants to be influenced by or on behalf of partners involved with them in such “domestic partner” relationships or arrangements is just as real as the potential for public servants to be influenced by or on behalf of spouses in legal marriages or family members. This article does not adopt any position regarding the propriety of such non-marital relationships among domestic partners. However, for purposes of implementing standards for the conduct of public servants in the performance of their job duties for the City of Detroit, the article does attempt to include within its reach all public servants.

The definition of domestic partner included in this section is modeled on the definition of domestic partner contained in Division 2.5 of the Family Code, Article 9 of Chapter 1, Part 5 of Division 5 of Title 2 of the Government Code, and Section 1261 of the Health and Safety Code of the State of California, relating to the domestic partners.

Private Gain: Section 2-106 of the 1997 Detroit City Charter expressly prohibits the use of public office for private gain. Accordingly, a major provision in this article is the prohibition against a public servant’s acceptance or receipt of private gain as compensation for 1) the taking of an official action in a specific manner by the public servant (for example, a particular decision or vote in a specific manner), or refraining from the taking of an official action, as the result of an improper influence by another party; or 2) incentive or inducement for the public servant to act in favor of an interest other than the public interest. In the interest of maintaining honesty, integrity and impartiality in government, the goal of this provision is to ensure that public servants conduct government business in a manner that enhances public confidence and respect for city government, and places paramount importance on the public interest, rather than a public servant’s own personal interest or the private interest of a third party.

Improper influence upon a public servant’s official actions refers to 1) any

action that would constitute a violation of federal or state laws regulating the conduct of public officials, such as state law prohibiting the acceptance by any executive, legislative or judicial officer of a bribe (Section 18 of the Michigan Penal Code, being MCL 750.118; MSA 28.1287(8)); or 2) facts, events or circumstances which give rise to an appearance of impropriety in the taking of an official action by a public servant, when such facts, events or circumstances are considered objectively according to a reasonable person standard.

What constitutes private gain to a public servant may take many shapes and forms and may vary depending upon the facts and circumstances of a situation. Therefore, the above definition of private gain does not attempt to enumerate all forms or types of tangible economic gain, or circumstances or situations from which a public servant may derive tangible economic gain for himself or herself. Rather than attempt to list what is private gain that may not be accepted in all circumstances, the article attempts to illustrate for public servants the circumstances or types of remuneration, emoluments, gratuities or other items that a public servant may accept without violation of this article. The listing set forth in this section is based on the most typical situations which confront city public servants. However, this is not an exhaustive list, and there may be other types of economic benefit to a public servant that are permissible under this article.

Questions about what is permissible under this article should be directed to the Board of Ethics created by section 2-106 of the 1997 Detroit City Charter, in accordance with the procedures set forth in section 2-6-101 of this article regarding advisory opinions.

Secs. 2-6-4--2-6-30. Reserved.

DIVISION 2. DISCLOSURE REQUIREMENTS

Sec. 2-6-31. Disclosure of interest in real and personal property.*

(a) In accordance with subsections (b) or (c) of this section, a public servant who exercises significant authority in the course of his or her duties over a decision by the city regarding the purchase, sale, lease, zoning, improvement, special designation tax assessment or abatement, or development agreement with respect to any real property, or the purchase, sale, or lease of any personal property, shall disclose any ownership interest that he or she, or his or her immediate family, has concerning such real or personal property.

(b) Where the circumstances in subsection (a) of this section exist, prior to a decision regarding such real or personal property that is made by the mayor, the city clerk, an appointee, an employee, or individual who provides services to the

city pursuant to a personal services contract, disclosure of an ownership interest therein shall be made on a form that shall be created by the law department, made available at the office of the city clerk and at each city department and agency, and filed upon completion at the office of the city clerk and with the respective city department director or agency head. Upon filing, the city clerk shall transmit the completed form to the city council, which shall refer a copy of the form to the respective department director or agency head. Where the city council takes action on an item that relates to such disclosure, following the action taken, the form shall be published in the Journal of the City Council.

(c) Where the circumstances in subsection (a) of this section exist, prior to a decision regarding such real or personal property that is made by the city council or by an authority, board, commission or agency of the city, such written disclosure shall be made a part of the minutes of the body on which the member who is making the disclosure serves. Immediately thereafter, the relevant portions of the minutes of such body shall be transcribed and attached to the form that shall be created by the law department, made available at the office of the city clerk, and filed upon completion at the office of the city clerk. Upon the filing of the completed form, the city clerk shall transmit the form to the city council for publication in the Journal of the City Council.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — This provision implements the directive of Section 2-106 of the 1997 Detroit City Charter that this article shall provide for the reasonable disclosure of a substantial financial interest held by any public servant in real property that is the subject of a governmental decision by the city or any agency of the city over which the public servant exercises significant authority in the performance of his or her duties. This section is not intended to conflict with the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 et seq; MSA 4.1700(30) et seq.

Sec. 2-6-32. Disclosure of interest in city contracts.*

(a) In accordance with subsections (b) or (c) of this section, a public servant who exercises significant authority in the course of his or her duties over the solicitation, negotiation, approval, amendment, performance or renewal of a city contract shall disclose any ownership interest that he or she, or his or her immediate family, has concerning such city contract.

(b) Where the circumstances in subsection (a) of this section exist, prior to a decision regarding such city contract that is made by the mayor, the city clerk, an

appointee, an employee, or individual who provides services to the city pursuant to a personal services contract, such disclosure of an ownership interest therein shall be made on a form that shall be created by the law department, made available at the office of the city clerk and at each city department and agency, and filed upon completion at the office of the city clerk and with the respective city department director or agency head. Upon filing, the city clerk shall transmit the completed form to the city council, which shall refer a copy of the form to the respective department director or agency head. Where the city council takes action on an item that relates to such disclosure, following the action taken, the form shall be published in the Journal of the City Council.

(c) Where the circumstances in subsection (a) of this section exist, prior to a decision that is made by the city council or by an authority, board, commission or agency of the city regarding such city contract, such written disclosure shall be made a part of the minutes of the body on which the member who is making the disclosure serves. Immediately thereafter, the relevant portions of the minutes of such body shall be transcribed and attached to the form that shall be created by the law department, made available at the office of the city clerk, and filed upon completion at the office of the city clerk. Upon the filing of the completed form, the city clerk shall transmit the form to the city council for publication in the journal of the city council.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — This provision implements the directive of Section 2-106 of the 1997 Detroit City Charter that this article shall provide for the reasonable disclosure of a substantial financial interest held by any public servant in a contract with the city where the public servant exercises significant authority over the solicitation, negotiation, approval, amendment, performance or renewal of such city contract in the performance of his or her duties.

Sec. 2-6-33. Disclosure of campaign contributions and expenditures.

In accordance with section 2-106(3) of the 1997 Detroit City Charter, the mayor, members of the city council, the city clerk and candidates for election shall make campaign contributions and expenditures public by filing the appropriate report(s) as required by the Michigan Campaign Finance Act, being MCL 169.201 et seq; MSA 4.1703(1) et seq.

(Ord. No. 22-00, § 1, 8-2-00)

Secs. 2-6-34--2-6-60. Reserved.

DIVISION 3. STANDARDS OF CONDUCT

Sec. 2-6-61. Engaging in official duties for private gain prohibited.

A public servant shall not engage in any act or omission in the discharge of his or her official duties for private gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-62. Use of confidential information for private gain prohibited.

A public servant shall not use confidential information that is acquired in the course of his or her employment for private gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-63. Disclosure of confidential information prohibited.

Except as authorized by law, a public servant shall not knowingly disclose to a third party confidential information that is acquired in the course of his or her employment.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-64. Use of city resources for commercial gain prohibited.

A public servant shall not use any city-owned real or personal property, city funds, city personnel, or any other tangible city resource for commercial gain.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-65. Incompatible employment or rendering services prohibited.

A public servant shall not engage in or accept employment, or render services, for a private or public interest where such employment or service is incompatible with the discharge of the public servant's official duties for the city, or where such employment or service is reasonably expected to impair the public servant's independence on judgment or action in the discharge of his or her official duties for the city.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-66. Representation of private entity prohibited.

(a) A public servant shall not act, for compensation by any person other than the city, as an agent, attorney, or representative for another person, business or organization in any matter that is pertinent before a city agency.

(b) A public servant may represent another person, business, or organization

before a city agency where such representation is a required part of the public servant's official duties.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-67. Self-interested regulation prohibited.

A public servant shall not make a loan of public funds, grant a subsidy, fix a rate, issue a license, permit or certificate, or otherwise regulate, supervise or participate in a decision that pertains to an entity in which the public servant, or a member of his or her immediate family, has an ownership interest.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-68. Improper use of official position prohibited.*

A public servant shall not use his or her official position in violation of federal or state law, or to obtain a private gain for the public servant in return for improperly influencing a decision of the mayor, of the city council, of the city clerk, or of a member of a city authority, board, commission, committee, council or group, or other city agency.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — This provision prohibits a public servant from using his or her official position in violation of federal or state law, such as the state law prohibiting bribery, being MCL 750.118; MSA 28.1287(8); the state law regulating conflicts of interest pertaining to public contracts involving public servants under the Michigan Contracts of Public Servants with Public Entities Act, being MCL 15.310 et seq; MSA 4.1700(30) et seq; the state law regulating political campaign organizations under the Michigan Campaign Finance Act, being MCL 169.201; MSA 4.1703(1) et seq; and the provisions of the Michigan Gaming Control & Revenue Act prohibiting a government official from soliciting or knowingly accepting anything of value or benefit from a casino licensee in return for influencing official action (see MCL 432.218(2)(c) and (d); MSA 18.969(218)(2)(c) and (d)).

This section also prohibits a public servant from accepting a private gain for the purpose of the exercise by the public servant of improper influence upon a decision by another public servant, namely the mayor, the city council, the city clerk, or a member of a city authority, board, commission, committee, council, or other city agency. The provision covers all authorities, boards, commissions and committees established by state law, the Detroit City Charter or the Detroit City Code, including such City entities as the board of zoning appeals, the Detroit city

planning commission, the Detroit building authority, the Detroit historic district commission, and the board of assessors, as well as advisory task forces that are responsible for assisting in the formulation of public policy.

Improper influence as used in this section refers to 1) any action that would constitute a violation of federal or state laws, or this article, regulating the conduct of public officials; or 2) facts, events or circumstances which give rise to an appearance of impropriety in official conduct, when such facts, events or circumstances are considered objectively according to a reasonable person standard.

The prohibition in the article is not intended to prevent a public servant from giving advice or seeking information as a necessary part of the public servant's duties, or from communicating with a city agency in the ordinary course of the city's business. Nor is this prohibition intended to chill a public servant's free speech rights under the First Amendment to the United States Constitution or under Article I, Section 5 of the 1963 Michigan Constitution where the public servant is expressing his or her views to another city public servant or before a city agency in a nonofficial capacity.

Secs. 2-6-69--2-6-90. Reserved.

DIVISION 4. BOARD OF ETHICS

Subdivision A. In General

Sec. 2-6-91. Charter independence; duties; promulgation of rules.

(a) The City of Detroit Board of Ethics is an independent body that was created by section 2-106(2) of the 1997 Detroit City Charter for the following purposes:

(1) To render advisory opinions regarding the meaning and application of provisions of the 1997 Detroit City Charter, this article, and other laws or regulations which pertain to disclosure requirements and standards of conduct for public servants;

(2) To conduct investigations based upon a complaint in order to ensure the integrity of city government, through the subpoenaing of witnesses, the administering of oaths, the taking of testimony, compulsion of the production of relevant evidence, and, when necessary, the appointment of independent counsel; and

(3) To recommend a) improvements in the disclosure requirements that are

found in Division II of this article, and the standards of conduct that are found in Division III of this article, and b) improvements in the administration and enforcement thereof, in order to promote an ethical environment within city government, and to ensure the ethical behavior of public servants.

(b) In accordance with section 2-111 of the 1997 Detroit City Charter, the board of ethics shall promulgate administrative rules to perform its duties as set forth in the 1997 Detroit City Charter and this article.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-92. Limitations on board's authority.

The board does not have the authority to reverse or otherwise modify a prior decision of the mayor, the city council, the city clerk, appointee, or other public servant.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-93. Composition of board of ethics; qualifications for members; terms; removal for cause; filling of vacancies.

(a) In accordance with section 2-106(2) of the 1997 Detroit City Charter, the seven (7) member board of ethics shall consist of:

(1) Three (3) members of the public who shall be appointed by the mayor;

(2) Three (3) members of the public who shall be appointed by the city council; and

(3) One (1) member of the public who shall be jointly appointed by the mayor and the city council.

(b) In accordance with section 2-106(2) of the 1997 Detroit City Charter, members of the board of ethics shall be residents of the city who are not elective officers, appointees or employees of the city at any time during their board membership, and shall serve without compensation. Members of the board shall not be an immediate family member or a relative of the mayor, the deputy mayor, the city clerk, or a member of the city council.

(c) In accordance with section 2-106(2) of the 1997 Detroit City Charter, all members of the board of ethics shall be restricted to a maximum of two (2) consecutive terms or to ten (10) years. Except for the initial terms that are delineated in subsection (d) of this section and the filling of vacancies under subsection (e) of this section, the terms for all members of the board shall be five (5) years.

(d) The initial terms for the members of the board of ethics shall be:

(1) Two (2) years for one (1) member who is appointed under subsection (a)(1) of this section;

(2) Two (2) years for one (1) member who is appointed under subsection (a)(2) of this section;

(3) Three (3) years for one (1) member who is appointed under subsection (a)(1) of this section;

(4) Three (3) years for one (1) member who is appointed under subsection (a)(2) of this section;

(5) Four (4) years for one (1) member who is appointed under subsection (a)(1) of this section;

(6) Four (4) years for one (1) member who is appointed under subsection (a)(2) of this section; and

(7) Five (5) years for the member who is appointed under subsection (a)(3) of this section.

(e) The members of the board of ethics are subject to removal for cause, pursuant to section 2-107(3) of the 1997 Detroit City Charter, by the appointing authority. Where a member of the board resigns or is removed for cause, the appointing authority shall appoint another individual to serve the remainder of the term.

(Ord. No. 22-00, § 1, 8-2-00; Ord. No. 4-01, § 1, 3-14-01)

Sec. 2-6-94. Resources and staffing.

(a) A sufficient annual appropriation shall be provided to enable the board of ethics to perform its duties as set forth in the 1997 Detroit City Charter and this article, including hiring adequate staff.

(b) The corporation counsel shall assign legal counsel from the City of Detroit Law Department who shall provide representation and advice to the board on legal matters. The board may refer a matter to the city attorney from the law department who represents the board for appropriate action. Upon completion of review and consideration, the city attorney shall report his or her findings to the board, any retention of outside counsel on behalf of the board of ethics shall be governed by the provisions of section 6-408 of the 1997 Detroit City Charter.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-95. Each city agency to cooperate and assist.

As needed, each city agency shall cooperate in gathering information to assist the board of ethics in performing its duties.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-96. Information provided to board to remain confidential.

Members of the board of ethics or any public servant who have access to any confidential information that is related to the functions or activities of the board are prohibited from divulging such information to any person who is not authorized to possess the information.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-97. Annual report.

(a) On or before April 1st of each year, the board of ethics shall issue simultaneously to the mayor and to each member of the city council a report that contains:

(1) An analysis of all activities of the board including the number of advisory opinions requested and the number issued, and the number of complaints filed and the disposition thereof during the preceding calendar year;

(2) A compilation of opinions that have been issued during the preceding calendar year; and

(3) The board's recommendations, if any, a) for improvement of the disclosure requirements that are found in Division II of this article, and the standards of conduct that are found in Division III of this article, and b) for improvement of the administration and enforcement thereof.

(b) In addition, a copy of this annual report shall be submitted to the city clerk, each department director, each agency head and the municipal reference library.

(Ord. No. 22-00, § 1, 8-2-00)

Secs. 2-9-98--2-9-100. Reserved.

Subdivision B. Advisory Opinions.

Secs. 2-6-101. Opinion request.

(a) A public servant, a former public servant, or an applicant or candidate to be a public servant may request an advisory opinion from the board of ethics

regarding the following:

(1) The application a) of the disclosure requirements that are found in Division II of this article, or b) of the standards of conduct that are found in Division III or this article, to particular facts and circumstances; and

(2) Where a public servant, a former public servant, or an applicant or candidate to be a public servant believes that he or she, or another public servant, former public servant, or applicant or candidate to be a public servant may have violated or may violate this article, whether an actual violation occurred or a potential violation may occur.

(b) A request for an advisory opinion shall be addressed to the board of ethics, shall be submitted in writing, shall set forth the facts and circumstances upon which the opinion is sought, and shall be signed by the person who is making the request.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-102. Identity of public servant, former public servant, or an applicant or a candidate to be a public servant requesting opinion to remain confidential; waiver of confidentiality.

(a) The identity of a public servant, former public servant, or an applicant or a candidate to be a public servant who requests an advisory ethics opinion is confidential, and any information that reveals the identity of the requestor of the opinion request is likewise confidential, where such disclosure of the information could lead to the disclosure of the identity of the public servant, former public servant, or applicant or candidate to be a public servant requesting the advisory opinion.

(b) A public servant, former public servant, or an applicant or a candidate to be a public servant who requests an advisory opinion and makes, or purports to make, his or her identity public is deemed to have waived the confidentiality of the request for an advisory opinion.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-103. Retaliation and harassment prohibited.*

(a) It shall be a violation of this article for any public servant, former public servant, or applicant or a candidate to be a public servant to retaliate in any manner against another public servant, former public servant, or applicant or candidate to be a public servant who requests an advisory opinion from the board

of ethics.

(b) It shall be a violation of this article for a public servant, former public servant, or an applicant or a candidate to be a public servant to use this article to harass a public servant, former public servant, or an applicant or a candidate to be a public servant by asserting a false allegation in an advisory opinion request that another public servant has violated this article with knowledge of its falsity or with reckless disregard for its truth or falsity.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — Section 2-106 of the 1997 Detroit City Charter requires that the board of ethics issue advisory opinions regarding the meaning and application of the Charter, city ordinances or other laws or regulations establishing standards of conduct for public servants. Aside from this Charter mandate, section 2-6-103(A) of the article arises out of the recognition that public servants can best conform their official conduct to the ethical standards set forth in this article if they understand these standards and how they apply in the everyday conduct of governmental business. Accordingly, it is the policy of this article to promote the submission by public servants of questions and issues they may have concerning the content and application of this article to the board of ethics for advisory opinions where necessary. In furtherance of this policy, and the fundamental goal of integrity in government, public servants must be immune from fear of retaliation for seeking legitimate advisory information from the board of ethics about the application of the article. Accordingly, the article prohibits retaliation against a public servant who requests an advisory opinion from the board of ethics.

Section 2-6-103(B) arises out of the parallel recognition that, despite the salutary objectives of this article, some individuals may nevertheless attempt to misuse and abuse its advisory opinion provisions for improper or bad faith motivations that have as their goal the infliction of harm or damage upon other public servants and their reputations. Accordingly, the article prohibits use of this article for the purpose of harassment of another public servant. For purposes of this article, harassment is defined as the assertion by a public servant in a request for an advisory opinion of a false or frivolous allegation of violation of this article by another public servant, where the public servant who seeks the advisory opinion knows of the falsity of the assertion or makes the false assertion with a reckless disregard for its truth or falsity, that is, has no reasonable basis for believing in the truthfulness of the assertion.

An aggrieved public servant, former public servant, or applicant or candidate

to be a public servant may file a complaint with the Board of Ethics against another public servant who has made a false allegation or assertion against him or her in an advisory opinion request for the purpose of harassment, which itself would be a violation of this section of the article.

Sec. 2-6-104. Disposition of opinion requests.

(a) The board of ethics shall dispose of an opinion request within ninety-one (91) days after its receipt of such request; however, under extraordinary circumstances, as defined in section 2-6-3 of this code, the board may extend its time to respond to a specific request by not more than thirty-five (35) additional days. In the event the board extends its time to respond to a request, the board shall notify, in writing, the requester of the extension and of the specific reasons therefore.

(b) The board of ethics shall dispose of a request for an advisory opinion in one (1) of the following ways:

(1) Deny the request where the request does not relate to this article; or

(2) Decline to issue an advisory opinion where the Board determines that the request does not merit review by the Board; or

(3) Issue an advisory opinion in response to the request.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — Section 2-6-104(B) recognizes the discretion the board of ethics has in addressing advisory opinion requests in the manner that it deems appropriate. In particular, the Board has discretion to decline to issue an advisory opinion where the request does not actually relate to the subject matter of the article; or where the board determines that the request does not otherwise merit review by the board, such as where the board determines that the request is frivolous in nature, or where the request does not present sufficient facts or information to enable the Board to formulate appropriate advise.

Secs. 2-6-105--2-6-110. Reserved.

Subdivision C. Complaints.

Sec. 2-6-111. Complaint; contents thereof; limitation of action.

(a) Except for members of the board of ethics, any person may file a complaint with the board of ethics where the person believes that a public servant may have violated this article.

(b) A complaint shall be made in writing on a form that is prepared by the law department and prescribed by the board of ethics, shall specify the provision(s) of this article alleged to have been violated and the facts alleged to constitute the violation, and shall be signed by the person who is making the complaint and sworn to in the presence of a notary public.

(c) Such a complaint shall be filed within six (6) months from the date that the complainant(s) knew or should have known of the action that is alleged to be a violation of this article, and in no event shall the board of ethics consider a complaint which has been filed more than two (2) years after a violation of this article is alleged to have occurred.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-112. Retaliation and harassment prohibited.*

(a) It shall be a violation of this article for any public servant to retaliate against any individual who files a complaint with the board of ethics on the basis that the individual has filed the complaint.

(b) It shall be a violation of this article for an individual to use this article to harass a public servant by filing a complaint with knowledge of its falsity or with reckless disregard for its truth or falsity.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary-- Section 2-6-112(A) arises out of the recognition that the entire public as well as all public servants must be vigilant in promoting and safeguarding ethical practices in the conduct of government business. As a mechanism for the enforcement of the article's provisions. Section 2-6-111 allows any person or member of the public as well as any public servant to file a complaint with the board of ethics where the person believes that a public servant has violated this article. Not only will the availability of the complaint procedure serve as a vehicle for enforcement of the article's code of conduct, but it is also intended to serve as a substantial deterrent to conduct or practices which violate the article. In furtherance of this policy, and the fundamental goal of integrity in government, individuals must be immune from fear of retaliation for filing of legitimate complaints asserting violation of the article. Accordingly, section 2-6-112(A) prohibits retaliation against an individual who files a complaint against a public servant with the board of ethics.

Section 2-6-112(B) arises out of the parallel recognition that, despite the salutary objectives of the article, some individuals may nevertheless attempt to

misuse and abuse its enforcement provisions for improper or bad faith motivations that have as their goal the infliction of harm or damage upon other public servants and their reputations. Accordingly, section 2-6-112(B) prohibits use of the article's complaint procedure for the purpose of harassment of another public servant. For purposes of this article, harassment is defined as the assertion by an individual of a false or frivolous complaint of violation of this article by a public servant where the person making the complaint knows of the falsity of the assertion or makes the false assertion with a reckless disregard for its truth or falsity, that is, has no reasonable basis for believing in the truthfulness of the complaint.

Sec. 2-6-113. Communications with the board regarding a complaint in the absence of the complainant, respondent, or his or her respective counsel prohibited.

(a) After a complaint has been filed and during its pendency before the board of ethics, no member of the board may communicate regarding the complaint directly or indirectly with any complainant, respondent, or his or her respective counsel, in the absence of the opposing party, except that:

(1) The members of the board may discuss the complaint with their staff, and may obtain legal advice from the law department or from outside counsel appointed by the law department;

(2) The members of the board may discuss the complaint at a lawfully conducted meeting; and

(3) The board's staff members may engage in communications necessary to investigate a complaint.

(b) Where any complainant or respondent, or his or her respective counsel, attempts to communicate with a member of the board of ethics regarding a pending complaint in the absence of the opposing party, the board member shall report the substance of the communication to the board on the public record at the next regular meeting of the board.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-114. Running of limitations of action; processing complaints.

(a) No action may be taken by the board of ethics on any complaint which is filed later than six (6) months from the date that the complainant(s) knew or should have known of the action that is alleged to be a violation of this article, and in no event shall the board consider a complaint which has been filed more

than two (2) years after a violation of this article is alleged to have occurred.

(b) In accordance with administrative rules that are promulgated pursuant to section 2-6-91 of this Code, the staff of the board shall acknowledge its receipt to the complainant(s), and forward the complaint simultaneously to each member of the board, the public servant who is complained against, and the city attorney from the law department who represents the board.

(c) In accordance with administrative rules that are promulgated pursuant to section 2-6-91 of this Code, the city attorney from the law department who represents the board shall provide the board with a preliminary written analysis of the complaint.

(d) In accordance with administrative rules that are promulgated pursuant to section 2-6-91 of this Code, the public servant who is complained against shall have the opportunity to submit a written response to the complaint prior to the board deciding whether to hold a hearing.

(e) In accordance with administrative rules that are promulgated pursuant to section 2-6-91 of this Code, following receipt of the city attorney's analysis, the board shall review and consider the complaint and the city attorney's analysis, and, if a hearing is to be held, shall set a date certain for the hearing to take place.

(Ord. No. 22-00, § 1, 8-2-00)

Sec. 2-6-115. Disposition of complaints.

(a) The board of ethics shall dispose of a complaint within ninety-one (91) calendar days after its receipt. However, under extraordinary circumstances, as defined in section 2-6-3 of this Code, the board may extend its time to respond to a specific complaint by not more than twenty-eight (28) additional days. In the event the board extends its time to respond to a complaint, the board shall notify, in writing, the complainant(s) and the public servant of the extension and of the specific reasons therefore.

(b) After giving due consideration to a complaint in accordance with the time-lines delineated in subsection (a) of this section, the board of ethics shall take any action or combination of actions, upon majority vote, which the body deems appropriate in order to dispose of a complaint including, but not limited to, one or more of the following:

(1) Dismiss the complaint based on any of the following grounds:

(i) The board has no jurisdiction over the matter; or

(ii) The complaint does not allege facts sufficient to constitute a violation of this article; or

(iii) The complainant has failed to cooperate in the board's review and consideration of the complaint; or

(iv) The complaint is defective in a manner which results in the board being unable to make any sound determination; or

(2) Determine that no violation of this article has occurred; or

(3) Determine that further information must be obtained in order for the board to determine whether the complaint alleges fact sufficient to constitute a violation of the article or whether a violation of this article has occurred; and

(i) Conduct its own investigation with respect to any alleged violation; or

(ii) Request the city attorney to investigate the complaint and report all findings back to the board; or

(4) Determine that a violation of state or federal law may have occurred, and refer the matter to the appropriate governmental authorities for review; or

(5) Determine that the complaint alleges facts sufficient to constitute a violation of this article and that the board will conduct a hearing with proper notice to determine whether a violation of this article has occurred; or

(6) Determine, on its own motion or upon request of the party who has had the complaint filed against him or her, whether the complaint was filed with knowledge of its falsity or with reckless disregard for its truth or falsity.

(c) Where a hearing is held, the board shall issue written findings of fact and conclusions of law as to whether a violation of this article has occurred. In its decision, the board may recommend the appropriate determinations that are delineated in section 2-6-116 of this Code.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — Where the board of ethics has determined, after disposition of a complaint pursuant to section 2-6-115, that the article has been violated by the conduct complained of, the public servant against whom the complaint was made may 1) be entitled to reasonable attorney fees incurred in the defense against the complaint, as provided for in section 2-6-117, where the board has also found that the public servant against whom the complaint was filed acted in the good faith performance of his or her duties, 2) file a complaint against the original complainant for violation of the prohibition at section 2-6-112(b) against

use of the article for harassment, and/or 3) file a civil action for defamation against the original complainant.

To constitute harassment in violation of section 2-6-112 of this article, the complainant must have filed the complaint with knowledge of its falsity or with reckless disregard of its truth or falsity. Beyond the determination of whether the conduct complained of constitutes a violation of the article, the board may, upon its own determination or in response to a request by the public servant against whom the complaint was filed, make the separate determination as to whether the complaint was filed with knowledge of its falsity or with reckless disregard for its truth or falsity.

Sec. 2-6-116. Violations of article; board permitted to make public admonition and to refer findings; cumulative effect.*

(a) In the event the board of ethics determines that a violation of this article has occurred, the board may adopt a resolution of public admonition against the mayor, a city council member, the city clerk, or an appointee regarding the violation. In addition, where, based upon an investigation arising from a complaint, the board of ethics determines that there may be grounds for further investigation for possible forfeiture of or removal from office under sections 2-107(2) of the 1997 Detroit City Charter and applicable Law, the matter may be referred by the board to the city council for consideration of forfeiture or removal proceedings in accordance with section 2-107(2) of the 1997 Detroit City Charter.

(b) In the event the board of ethics determines that a violation of this article has occurred, the board may adopt a resolution of public admonition against a public servant other than the mayor, a city council member, the city clerk or an appointee regarding the violation. In addition, where the board of ethics determines that a violation of this article by such public servant may present grounds for disciplinary action, the matter may be referred by the board to such public servant's supervisor with a recommendation that the public servant's conduct be reviewed for disciplinary action. Any such disciplinary action must be carried out in accordance with the provisions of the 1997 Detroit City Charter and other laws, policies and procedures that are applicable to the position of the public servant and with the gravity of the offense.

(c) Where the board of ethics finds that a decision of the mayor, the city council, the city clerk, an appointee, or other public servant was made in violation of this article, the board may recommend to the mayor, the city council, the city clerk, an appointee, or other public servant that such decision be reviewed in accordance with the applicable provisions of the 1997 Detroit City Charter and

this Code. Upon such recommendation, the decision may be reviewed by the mayor, the city council, the city clerk, appointee, or other public servant in accordance with the applicable provisions of the 1997 Detroit City Charter, this Code, and any other applicable laws.

(d) Where the board of ethics determines that an existing city contract has been entered into in violation of the provisions of this article, after such determination and recommendation from the board, the city may void or seek termination of the contract where legally permissible.

(e) The invocation of one (1) subsection of this section does not preclude the application of any other subsection of this section or of any other applicable laws or policies.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary-- Section 2-106 of the 1997 Detroit City Charter directs that the code of governmental conduct enacted by the city council in ordinance form shall contain appropriate penalties for violations of its provisions. Section 2-6-116 sets forth these potential penalties.

Section 2-6-116(A) of the article establishes public admonition as a punishment for violation of the article by an elected official or appointee. In addition, information discovered by the board in the course of investigation of a complaint against an elected official or appointee may reveal circumstances which may constitute the basis for forfeiture of or removal from office under section 2-107(2) of the 1997. Detroit City Charter. Inasmuch as this Charter section conters upon the city council rather than the board of ethics the authority to decide whether the circumstances for forfeiture or removal from office exist, section 2-6-116 of the article provides that the board may refer a matter to the city council for investigation and consideration where a board investigation reveals a possible basis for forfeiture under the charter or applicable law.

Section 2-6-116(B) likewise makes public admonition available to the board of ethics as a penalty for violation of the article by a public servant other than an elected official or appointee, such as a city employee. It is also recognized that a violation of the article by such a public servant may constitute grounds for disciplinary action against the public servant. Although the board of ethics is not empowered by the Charter to impose discipline upon a public servant, the board may refer a proven violation by the public servant to the appropriate city official and/or supervisor who has the authority to consider and impose discipline. Any disciplinary action based on a violation of this article must be consistent with the

provisions of the charter and any other laws, policies or procedures that may apply to the public servant, such as the city's civil service rules or collective bargaining agreements.

Section 2-6-116(c) recognizes that a decision which was made in violation of this article may warrant review by the appropriate public officials. Whether or not such decision may be subject to reconsideration or reversal will depend upon the facts and circumstances of the situation and the application of relevant law.

Sec. 2-6-117. Reimbursement of reasonable attorney fees to a public servant.*

(a) In accordance with Michigan common law and within the structures of subsections (b), (c) and (d) of this section, the board of ethics shall reimburse a public servant from the city's general funds for reasonable attorney fees which are incurred in the defense of a complaint filed against him or her under section 2-6-111 of this Code where the board determines that, based upon all factual findings from the hearing, the public servant 1) acted in the good faith performance of his or her duties, and 2) did not violate this article.

(b) The maximum reimbursement for such attorney fees shall not be greater than one hundred fifty percent (150%) of the hourly rate that is established, pursuant to 18 U.S.C. § 3006A(d), for the payment of appointed counsel for matters arising in the United States District Court for the Eastern District of Michigan.

(c) When determining the hourly rate of attorney fees to be reimbursed to a public servant under subsection (A) of this section, the Board shall consider the following factors: 1) the professional standing and experience of the attorney; 2) the skill, time, and labor involved in defending the ethics complaint; and 3) the complexity of the complaint.

(d) Where the board of ethics determines that a public servant is entitled to reimbursement of attorney fees under subsection (a) of this section, the administrative rules that are promulgated pursuant to section 2-6-91 of this Code shall control the procedure for submission and review of relevant documentation.

(Ord. No. 22-00, § 1, 8-2-00)

*Commentary — In spite of the salutary objectives of the article, some individuals may attempt to misuse it by making unjustified, false or frivolous charges of violation of the article by public servants. A public servant may expend substantial time and monetary resources in defending against a complaint,

including attorney fees. This expenditure of resources may be compounded where a public servant is the unwitting target of and must defend against more than one baseless complaint. In recognition of this potential, this provision requires that the board of ethics grant an application for reimbursement of reasonable attorney fees incurred for the defense of a complaint where the board determines that the public servant acted in good faith in the performance of his or her duties and did not violate the article.

The authorization for the use of the city's general funds for this purpose is rooted in Michigan common law which recognizes the discretionary power of a municipality to appropriate funds for the necessary expenses incurred by a public servant in defending against complaints arising out of the good faith performance of official duties. *Messmore v. Kracht*, 172 Mich 120; 137 NW 549 (1912). See also, *City of Warren v. Dannis*, 136 Mich App 651; 357 NW2d 731 (1984); 1976 OAG, No. 4947, pp 349-350 (March 24, 1976) (concluding in favor of city reimbursing a public official for attorney fees incurred in defending against misconduct charges where official acted in good faith in discharging official duties); accord, *Ellison v Reid*, 397 So2d 352 (Fla App Div 1 1981) (affirming use of public funds to pay legal expenses of municipal official defending against claim of ethical misconduct).

The formula for attorney fee awards is adapted from the national rate which is used by the federal district courts to pay appointed counsel in such courts. The discretion of the Board in determining the amount of attorney fees to be reimbursed must be exercised reasonably, according to the criteria set forth in subsection (c) of this section.

(Ord. No. 22-00, § 1, 8-2-00)

Secs. 2-6-118--2-6-120. Reserved.